



**STATE BOARD OF EQUALIZATION  
STAFF LEGISLATIVE ENROLLED BILL ANALYSIS**

DRAFT

Date:	Enrolled	Bill No:	<a href="#">Assembly Bill 2207</a>
Tax Program:	Property	Author:	Gordon
Sponsor:	California Council of Land Trusts	Code Sections:	RTC 214.02
Related Bills:		Effective Date:	Upon enactment

**BILL SUMMARY**

This bill ensures that in determining eligibility for the property tax welfare exemption available for property being preserved in its natural state, activities resulting in revenues and leases of property furthering the conservation objectives of the property as provided in a qualified conservation management plan, as specified, will not disqualify the property.

**ANALYSIS**

**CURRENT LAW**

Revenue and Taxation Code Section 214.02 establishes the property tax exemption for property in its natural state as part of the constitutionally based welfare exemption. These are:

- properties that are used exclusively for the preservation of native plants or animals, biotic communities, geological or geographical formations of scientific or educational interest, or
- open-space lands used solely for recreation and for the enjoyment of scenic beauty.

These properties must be open to the general public, subject to reasonable restrictions, concerning the needs of the land.

The exemption does not apply to property reserved for future development. Additionally, it does not apply to a nonprofit organization that owns more than 30,000 acres in a single county if is not fully independent, as specified, of the owner of adjacent taxable lands.

To qualify, the property must be owned and operated by a scientific or charitable organization with the primary interest of preserving those natural areas and meeting all the requirements of Section 214.

**PROPOSED LAW**

This bill would add subdivision (d) to Section 214.02 to provide that in determining whether the property is used for the actual operation of the exempt activity as required by subdivision (a), consideration shall not be given to the use of the property for either of the following:

- Activities resulting in revenues, whether direct or in kind, if those activities further the conservation objectives of the property as specified in its qualified conservation management plan. Those revenues include those revenues

---

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.*

derived from grazing leases, hunting and camping permits, rents from persons performing caretaking activities who reside in dwellings on the property, and admission fees collected for purposes of public enjoyment.

- Any lease of the property for a purpose furthering the conservation objectives of the property as provided in a qualified conservation management plan for the property.

Any such activity or lease may not generate unrelated business income.

A “qualified conservation management plan” means a plan that:

- Identifies that the foremost purpose and use of the property is for the preservation of native plants or animals, biotic communities, geological or geographical formations of scientific or educational interest, or as open-space lands used solely for recreation and for the enjoyment of scenic beauty.
- Identifies the overall conservation management goals, including, but not limited to, identification of permitted activities, and actions necessary to achieve the goals.
- Describes the natural resources and recreational attributes of the property as well as potential threats to the conservation values or areas of special concern.
- Includes a timeline for planned management activities and regular inspections of the property.

#### IN GENERAL

**Welfare Exemption.** Under Section 4(b) of Article XIII of the California Constitution, the Legislature has the authority to exempt property (1) used exclusively for religious, hospital, or charitable purposes, and (2) owned or held in trust by nonprofit organizations operating for those purposes. This exemption from property taxation, popularly known as the *welfare exemption*, was first adopted by voters as a constitutional amendment on November 7, 1944. With this amendment, California became the last of 48 states in the country to provide such an exemption from property taxes.

When the Legislature enacted Revenue and Taxation Code Section 214 to implement the Constitutional provision in 1945, a fourth purpose, *scientific*, was added to the three mentioned in the Constitution. Section 214 parallels and expands upon the Constitutional provision by exempting property used exclusively for the stated purposes (religious, hospital, scientific, or charitable), owned by qualifying nonprofit organizations if certain requirements are met. An organization's *primary* purpose must be either religious, hospital, scientific, or charitable. Whether its operations are for one of these purposes is determined by its activities. A qualifying organization's property may be exempted fully or partially from property taxes, depending on how much of the property is used for qualifying purposes and activities. Section 214 is the primary welfare exemption statute in a statutory scheme that consists of more than 20 additional provisions. Over the years, the scope of the welfare exemption has been expanded by both legislation and numerous judicial decisions.

The Constitution and statutes impose a number of requirements that must be met before property is eligible for exemption. In general:

- The property must be irrevocably dedicated to religious, hospital, scientific, or charitable purposes.

---

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.*

- The owner must not be organized or operated for profit and must be qualified as an exempt organization, under a specific federal or state statute, by the Internal Revenue Service or the Franchise Tax Board.
- No part of the net earnings of the owner may inure to the benefit of any private shareholder or individual.
- The property must be used for the actual operation of the exempt activity.

#### BACKGROUND

**Natural State Properties.** Section 214.02 was added during the 1971 special session of the Legislature. This provision had been included in bills heard during the 1971 regular session (AB 1264, Biddle and AB 185, Bagley), and was the product of a 1970 Assembly Revenue and Taxation Committee interim hearing on the subject of natural lands preservation. In 1970, the Committee held hearings and conducted studies to investigate alternative tax policies that would have a positive environmental influence on the future of the state. The staff report to the committee concluded that, due to an over reliance on property tax revenues, local governments were reluctant to preserve open space areas, recreational areas, and ecologically valuable areas. Hence, land was becoming a vanishing resource subject to irreparable damage. (Source: The Fiscal Implications of Environmental Control; an Appendix to Final Report of the Assembly Committee on Revenue and Taxation, Interim Activities (1970) pp. 90-92.)

**Sunset Date History.** The intent of the original legislation enacting Section 214.02 was to assist nonprofit organizations that purchased open-space and similar lands, held the lands temporarily, and then sold or donated the lands to public agencies for permanent use as park facilities. A sunset date was included in the original legislation as a result of a Senate Revenue and Taxation Committee hearing, to ensure that the charitable organizations sold or donated the lands rather than hold them indefinitely. Since that time, it appears that in some cases charitable organizations may be the permanent owners of lands due, in part, to the limited ability of public agencies to acquire additional lands. The sunset date has been continuously extended since then as noted in the following table.

Bill	Author	Years Extended	Sunset Year
AB 971 (Ch. 67, Stats. 1982)	Bergeson	1	1982
AB 2308 (Ch. 1485, Stats. 1982)	Bates	5	1987
AB 2890 (Ch. 1457, Stats. 1986)	Hannigan	5	1992
AB 2442 (Ch. 786, Stats. 1992)	Baker	10	2002
SB 198 (Ch. 533, Stats. 2001)	Chesbro	10	2012
AB 703 (Ch. 575, Stats. 2011)	Gordon	10	2023

When the extension of the welfare exemption was discussed in 1982, concern was expressed that the exemption primarily benefited the former owner of 42,000 acres of land on Santa Catalina Island, who at that time was the sole owner of large landholdings in the middle of the exempt property. It was argued that this situation gave the owner the benefits of a large estate without having to pay tax on the entire property. Thus, limited provisions were added to prevent the operation of the exempt property

---

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.*

from inuring to the benefit of the adjacent land owner. Today, many organizations throughout the state benefit from the exemption, and it is no longer viewed as primarily benefiting one particular property.

The constitutionality of Section 214.02 was questioned and upheld in *Santa Catalina Island Conservancy v. County of Los Angeles* 126 Cal.App.3d 221(1981) on the basis that preservation of natural environments and open space recreational opportunities for the benefit of the general public is a “charitable” purpose.

## COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the California Council of Land Trusts to ensure that certain activities do not disqualify a nonprofit organization from the welfare exemption so long as the activity is (1) consistent with the conservation purposes of the exemption, and (2) consistent with the conservation management plan for the property. It is intended to directly address activities such as cattle grazing and hunting of invasive species as allowable activities provided they further conservation purposes. Furthermore, it is intended to promote statewide uniformity in the administration of the exemption and ensure that properties will be treated similarly throughout California.
2. **Amendments.** The July 5, 2012 amendments delineated specific qualifying activities to narrow the scope of the bill to limit any unintended consequences.
3. **Issue.** The sponsor reports that some counties do allow the property tax exemption, in whole or part, if the nonprofit organization receives income on the property from grazing leases and hunting fees.
4. **County assessors determine whether the use of a property qualifies for the welfare exemption and BOE opinions are advisory in nature.** As of January 1, 2004, the function of determining welfare exemption eligibility with respect to the use of a particular property solely rests within the discretion of the county assessor (RTC Section 254.5).
5. **Exclusive Use Requirement: “Incidental To and Reasonably Necessary For”.** Section 214 provides an exemption for property “used exclusively” for charitable purposes. The Revenue and Taxation Code does not specifically define the term “used exclusively;” however, the courts have done so in a series of decisions. The California Supreme Court, following a rule of strict, but reasonable construction, has construed “exclusively used” in Section 214, subdivision (a), to include any use of the property which is “incidental to and reasonably necessary for the accomplishment of the [exempt] purpose.” (*Cedars of Lebanon v. County of Los Angeles* (1950) 35 Cal.2d 729, 736.) Thus, the exclusive use requirement means that a qualified organization’s ongoing use of its property must be for exempt purposes and activities, and any other uses of the property must be related to and reasonably necessary for the accomplishment of the exempt purpose.
6. **Cattle Grazing.** On the issue of cattle grazing, there is disagreement over whether it is incidental to and reasonably necessary to the accomplishment of the exempt purposes. This bill seeks, in part, to address this issue legislatively. The BOE staff has issued two legal opinions (only one of which is annotated) to two counties concerning cattle grazing rights on properties for which a nonprofit organization claimed the welfare exemption and opined that, pursuant to the particular facts in those two cases, the property was not eligible for the welfare exemption on

---

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE’s formal position.*

multiple grounds including that the grazing was not incidental. See Annotation 880.0129 [http://www.boe.ca.gov/proptaxes/pdf/880\\_0129.pdf](http://www.boe.ca.gov/proptaxes/pdf/880_0129.pdf). These opinions are advisory in nature and are not binding on any county assessor.

7. **A use that is “incidental to and reasonably necessary for” the accomplishment of the exempt purpose does not disqualify a property from the welfare exemption.** However, there is no express threshold or standard in law as to what “incidental to and reasonably necessary for” is and the interpretation of this phrase could vary. This could explain why some counties have allowed grazing and hunting on certain properties while others have not. Both the level of the activities as well as the county’s judgment as to that activity might differ. In the two BOE legal opinions noted above, the cattle grazing was not considered to be incidental according to the facts in those cases. The proponents assert that any activity or lease that furthers the conservation objectives as provided in the conservation management plan for the property should be considered incidental to and reasonably necessary for the accomplishment of the preservation of these lands.
8. **Grazing as a management tool.** In the two cases noted above, nonprofit organizations claimed, but were not successful, in their argument that the cattle grazing leases are a management tool incidental to its land preservation purposes and essential to the proper management of the property. For example, they note that grazing is often an important activity to maintain native grasses and wildflowers as well as provide fuel control for fire prevention. Hence, this bill was introduced to seek legislation that directly addresses their concern.
9. **Related Court Cases.** In support of their position, proponents note the case of *San Francisco Boys’ Club, Inc. v. Mendocino County* (1967) 254 Cal.App.2d 548. In that case, the court of appeal affirmed the trial court’s finding that the entire Boys’ Club’s property, almost 2,000 acres, was necessary for and was used for the operation of a boy’s camp and was within the purposes of the welfare exemption, notwithstanding the fact that logging operations on the property, conducted by independent contractors hired by the purchaser of the timber, had occurred. As to the logging operations, the court of appeal stated at pages 559 and 560:

..., the charitable entity must be permitted to manage its property as a prudent owner. If incidental to that management it is reasonable to harvest the timber growing on the property, such an operation is compatible with and not hostile to its use for the charitable activity. Being a part and parcel of that use, it does not detract from, or destroy, the exclusiveness of that use. This construction is supported by the following principle: “Under the cases, it is certainly well settled that however strict the courts may be in determining whether the use of property brings it within the exemption at all, if the court once holds that the property generally qualifies for the exemption, it will be extremely liberal in holding that some incidental use does not take it out of the exemption.”

With respect to hunting and charging fees, proponents note the case of *Santa Catalina Island Conservancy v. Los Angeles County* 126 Cal. App. 3d 221 (1981). In that case, the court held that a substantial portion of Santa Catalina Island, preserved as open-space land for recreational and ecological purposes, was used exclusively for charitable purposes, although motor tours and a hunting program were conducted by independent contractors on the property. The court ruled that

these uses of the property were reasonably necessary and incidental to the preservational, instructive and recreational purposes of the Conservancy. The tours provided access to many persons to see and enjoy the property; and the hunting program, in addition to its recreation value, was a game management tool.

10. **Should a particular property not qualify for the welfare exemption, either in full or in part, other preferential assessments are available.** Properties may be eligible for a Williamson Act Contract or an Open Space Easement Contract. Additionally, there are a variety of programs offered by the Wildlife Conservation Board <http://www.wcb.ca.gov/Programs/>, including the Rangeland, Grazing Land and Grassland Protection Act of 2002 which provides protections through the use of conservation easements <http://www.wcb.ca.gov/Rangeland/index.html>. A conservation easement registry is available at [www.easements.resources.ca.gov](http://www.easements.resources.ca.gov).
11. **From time to time the Legislature has enacted additional statutes specifying that certain types of uses of property do not disqualify a property from receiving the welfare exemption.** For instance, specific instances relating to museums (RTC Section 214.14), using property to hold bingo games provided the proceeds from the games are used exclusively for the charitable purposes of the organization (RTC 215.2), allowing the property to be used as a polling place (RTC 213.5), allowing occasional (irregular or intermittent basis) fundraising activities (RTC 214(a)(3)(A); allowing meetings to be held by other nonprofits (RTC 214(a)(3)(D)); and allowing certain uses related to the needs of hospitals (RTC 214.11).

## COST ESTIMATE

The BOE would incur some minor absorbable costs in informing and advising county assessors, the public, and staff of the change in law.

## REVENUE ESTIMATE

According to the sponsor, five counties have not approved the welfare exemption on properties because of this issue and the property tax revenue associated with those properties is \$295,000.

---

Analysis prepared by:	Rose Marie Kinnee	916-445-6777	09/04/12
Contact:	Robert Ingenito	916-322-2376	

Is

2207abenrrmk.doc

---

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.*